With respect to the learned Chief Justice who decided the *Coldham case*, I think he was wrong in saying that he would refuse to grant security for costs on the ground that the Straits Settlements Reciprocal Enforcement of Judgments Ordinance was *in pari materia* with the Judgments Extension Act of 1868. It happens that that part of his judgment is *obiter dictum* because he in fact decided the case by holding that the facts of the particular application did not warrant his exercising his discretion to order security.

I must therefore follow the judgment of Smith J. in *Ng Hui Lip case* in so far as he decided that the fact that the plaintiff is resident in Singapore is not a ground for refusing to order security for costs because the registration in Singapore of a judgment issued by the Supreme Court of the Federation of Malaya is not automatic. It is a process which involves a judicial officer being put in motion and which may be the subject of dispute. Both the *Coldham case* and the *Ng Hui Lip case* were concerned with section 369 of the Civil Procedure Code. This has been replaced by Order 65 r.6A of the Rules of the Supreme Court. This is identical with the English rule. It appears from the commentary in the *Annual Practice* that where the plaintiff is resident abroad security for costs will be ordered. Order 65 r.6A is very short and it is not so elaborate as section 369 of the Civil Procedure Code which requires the defendant to show that the plaintiff possesses sufficient immovable property within the Federation to satisfy the judgment of costs. The plaintiff company admits that the defendant has been to their premises in Brickfields Road. The defendant has deposed that he was informed (no doubt by the managing director) that the plaintiff company do not have any property movable or immovable in the Federation of Malaya. The managing director in his affidavit does not deny that they have no immovable property. He merely deposes that the value of furniture and fittings and sundry debtors in the Federation of Malaya amounts to $50,000. He does not say how much of this sum is represented by sundry debtors. Such movable property as this can scarcely be said to provide adequate security to see to it that if the defendant were successful he would not be denied the remedy of enforcing the order for costs against the plaintiff.

Since therefore it has been established that the plaintiff is resident in Singapore out of the jurisdiction and since the normal practice where the plaintiff is resident abroad is to order the plaintiff to give the defendant security for costs the application must be granted and the plaintiff must pay the costs.

Application granted.

Solicitors *H. N. McLeod; Murugason & Co.*

LAU KEE KAR v. MAT BIN SAADIN & ANOR.

[O.C.J. (Syed Sheh Barakbah J.) November 9, 1960]

[Alor Star — Kedah Civil Suit No. 78 of 1956]

Damages — Road Accident — Negligence — Principle for the assessment of damages.

The plaintiff as administrator of the estate of his infant daughter sued the defendant for damages for negligent driving. There were two main issues for consideration, namely whether the defendant who drove the car was negligent and whether the defendant driving the car was an agent or servant of the second defendant who was the owner of the car.

Held: (1) from the evidence it was the act of the first defendant who was driving that actually caused the accident and although the deceased was to a certain degree also at fault, it was the first defendant who was liable;

(2) on the facts of the case the first defendant was not the servant or agent of the second defendant and as such the second defendant was not responsible for the wrongful act of the first defendant;

(3) damages should be assessed on the principle of *Benham* v. *Gambling*. (2)

[Editorial Note: It would appear that *Tham Kwa Chin* v. *Choong Hoong Sum* [1954] M.L.J. 161 was not cited to the Court in this case. There it was decided that in assessing the damages and following the principle on question of *quantum* of damages laid down in *Benham* v. *Gambling* it should be borne in mind that the value of the money has fallen very much since that case was decided.]

Cases referred to:—

(1) *Tan Kwee Low* v. *Lee Chong & Anor.* [1960] M.L.J. 212.

(2) *Benham* v. *Gambling* [1941] A.C. 157.

ACTION FOR DAMAGES.

Lim Cheng Chuan for the plaintiff.

Wong Sheng Chan for the 1st defendant.

Huck Aik for the 2nd defendant.

Syed Sheh Barakbah J.: This is a case where the plaintiff as administrator of the estate of his daughter Law Mooi Seang, deceased, aged 6 years, sues the defendants for damages for negligent driving.

The facts in brief are that on the 28th day of July 1955 at about noon, defendant No. 1 who was driving car No. P 9027 with DW2 seated beside him along Jalan Sekerat, Sungei Patani, knocked down the said Looi Mooi Seang while she was crossing the road. She was taken to Sungei Patani Hospital where she died at about 3.00 p.m. the same day.

Defendant No. 2 who was the owner of the car was alleged by the plaintiff to be equally liable for the negligent driving of his agent or servant, defendant No. 1.

Unfortunately, there were no independent witnesses to this accident. The evidence available was only that of PW1 and PW2 and some circumstantial evidence.

According to PW1, when he was in his house he heard people shouting outside and he went out. He saw his daughter lying on the side of the road about four feet away from the

edge of the tarred road. He also saw car No. P 9027 moving away towards the town.

PW2 gave evidence that when he was at home he heard a sound "Pomp" like that of impact made by a car. He went out to see and saw a child lying on the side of the road. There was a car driven by defendant No. 1. He pulled the child out a little from underneath the car and then PW1 arrived.

PW3, the Police Corporal, visited the scene. He saw some red marks like blood on the road. He did not find any brake marks.

There are two issues to be decided—

(i) Was defendant No. 1 negligent and

(ii) Was defendant No. 1 agent or servant of defendant No. 2.

With regard to the first issue, counsel for defendant No. 1 alleged that there was contributory negligence on the part of the deceased in running across the road. It happened so suddenly that defendant No. 1 was taken aback and forgot to apply his brakes. He did, however, sound the horn and swerved to the right to avoid the child and in doing so collided with the child. Mr. Wong further submitted that if the plea of contributory negligence was not accepted both defendant No. 1 and the deceased should be considered equally at fault.

Counsel for the plaintiff in his submission stated that the negligence was solely on the part of the 1st defendant. He pleaded guilty in the Magistrate's Court for negligent driving and was convicted and sentenced. He admitted in his evidence that he did not apply the brakes and stated that if he had done so he would not have knocked against the child. He swerved the car to the right and in so doing hit the child on the right side of the road.

On this issue, to my mind, the passage in *Halsbury's* Laws of England, (3rd edition), Volume 28, page 31, para 27, is relevant. It reads as follows :—

" Where the plaintiff's act does not follow the defendant's negligence but is synchronous with it, the defendant will usually be liable. The same is true if the acts, though not strictly synchronous, are closely together and the second is so mixed up with the state of things brought about by the first that the first is part of the cause of the injury. In such cases the question is not who had the last opportunity of avoiding the mischief, but whose act or acts caused the wrong. Thus a negligent driver is not relieved of liability where he injures a passenger who was travelling in a dangerous position on the defendant's or on another person's vehicle. The defendant will ordinarily be responsible where he has been subsequently and severally negligent even though the earlier negligence of the plaintiff created the static position upon which the accident supervened."

Bearing in mind the principle stated above, it would appear from the evidence that it was the act of defendant No. 1 which actually caused the accident and although the deceased was to a certain degree also at fault, defendant No. 1 is, in my opinion, liable.

With regard to the second issue, counsel for the plaintiff referred to the case of *Tan Kwee Low* v. *Lee Chong & Anor.*[1] in which it was stated that the evidential presumption was that the driver of a car was, in default of evidence, the servant or agent of the owner. Here it is admitted that defendant No. 2 is the owner of the said car. In his evidence he denied giving defendant No. 1 permission to use his car. In fact he did not even know defendant No. 1, and he was not even called as a witness at the death enquiry. He had left his car in the workshop for overhaul and when he went and fetched it back, no one there mentioned to him about the accident.

DW4, the foreman, also denied allowing defendant No. 1 to use the car although defendant No. 1 stated that he drove the car with DW4's permission. He also was not a witness at the enquiry.

Defendant No. 2 appeared to me to be a witness of truth and on the facts defendant No. 1 could not be the servant or agent of defendant No. 2. There was therefore no reason why he should be made responsible for the wrongful act of defendant No. 1.

The plaintiff claims $20,000 damages which I consider grossly excessive. In my opinion the assessment should be based on the principle as laid down in *Benham* v. *Gambling*[2]. I allow $150 for special damages including funeral expenses. The deceased was a normal, healthy child and had it not been for her early death she would, in my opinion, have led a life with some measure of happiness. I assess general damages at $2,000 total $2,150. As the deceased herself had to a certain degree contributed to her own death an amount, which I assess at $400 should be deducted from the sum of $2,150 leaving a balance of $1,750. I therefore give judgment for the plaintiff for the sum of $1,750 with costs to be paid by defendant No. 1. The claim against defendant No. 2 is dismissed with costs to be paid by the plaintiff.

Order accordingly.

Solicitors *Pillai, Lim, Lee & Hwang; Wong Sheng Chan; Huck Aik & Cheng Hock.*

YEO LIAN HWA & ANOR. v. THE HOCK LEE AMALGAMATED BUS CO., LTD.

[O.C.J. (Ambrose J.) November 18, 1960]

[Singapore — Suit No. 327 of 1959]

Road accident — Negligence — Contributory Negligence and Personal Injuries Ordinance, (Cap. 25), s.3 — Duty of care — Reasonable foreseeability.

A bus approached a bus stop slowing down to a speed of 5 miles per hour, travelling about 3 feet from the near-side of the road, and giving the impression that it was going to stop behind a stationary bus. There were several persons waiting near the rear of the stationary bus. A person rushed from behind the stationary bus towards the near-side of the approaching bus with the intention of boarding it. He was near the door of the bus, which was at the middle of its near-side, when the driver of the bus, which was then 18 feet